

FILED
LODGED
AUG 22 2002
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

Honorable Robert S Lasnik

CC TO JUDGE

UNITED STATES DISTRICT COURT WESTERN DISTRICT
OF WASHINGTON AT SEATTLE

ALLAN BERMAN, individually and as
personal representative of the estate of
Kathryn Hamilton,

PLAINTIFF

V.

THE FRED HUTCHINSON CANCER
RESEARCH CENTER, et al ,

DEFENDANTS.

No C01-0727R

DECLARATION OF MICHAEL
MADDEN

CV 01-00727 #00000158

I am one of the attorneys representing defendants Fred Hutchinson Cancer
Research Center in this matter This Declaration is based on my personal knowledge
Attached to this Declaration are true and correct copies of the deposition excerpts
submitted in connection with the Hutchinson Defendants' Motion for Reconsideration of
Order Granting Plaintiff's Motion for Partial Summary Judgment on Informed Consent
Claim, as follows.

Exhibit 1 Deborah L. Woehler deposition excerpts

ORIGINAL

DECLARATION OF MICHAEL MADDEN
(C01-0727 R) - Page 1

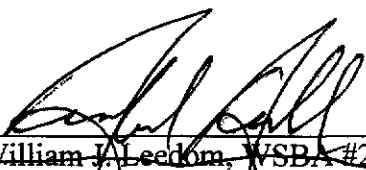
LAW OFFICES
BENNETT BIGELOW & LEEDOM, P S
999 Third Avenue, Suite 2150
Seattle, Washington 98104
(206) 622-5511

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1 I declare under penalty of perjury under the laws of the State of Washington that
2 the foregoing is true and correct

3
4 DATED this 22nd day of August, 2002.

5
6 BENNETT BIGELOW & LEEDOM, P S

7
8 By 
9 ~~William J. Leedom, WSBA #2321~~
10 Michael Madden, WSBA #8747

11 Joseph M. Hassett
12 George H Mernick, III
13 Barbara F Mishkin
14 HOGAN & HARTSON

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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ALLAN BERMAN, Individually *
and as Personal *
Representative of the *
Estate of Kathryn Hamilton *

NO. C01-0727L(BJR)

7

8

VS.

COPY RECEIVED
TIME 3:40 BY [Signature]

9

THE FRED HUTCHINSON CANCER *
RESEARCH CENTER; DR. WILLIAM *
BENSINGER; DR. C. DEAN *
BUCKNER; DR. FREDERICK *
APPLEBAUM; and DR. ROBERT *
DAY *

JUN 25 2002

BENNETT BIGELOW
& LEEDOM

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COPY

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DEPOSITION OF MS. DEBORAH L. WOEHLE

16

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UPON RECEIPT OF SIGNATURE, THE ORIGINAL OF THIS
DEPOSITION WILL BE IN THE CUSTODY OF:

18

19

MR. MIKE MADDEN
BENNETT BIGELOW & LEEDOM, P.S.
999 THIRD AVENUE
SUITE 2150
SEATTLE, WASHINGTON 98104

20

21

22

23

24

6/21/02
Date
06-21-02

[Signature]
Samantha L. Dennis, CSR
HOUSTON, TEXAS

25

1 investigator requested the IRB to delete the reference to
2 IV pentoxifylline from the protocol and the consent form?

3 A. That was in the letter dated December 7th.

4 Q. Right.

5 And is it further your understanding that
6 the IRB Committee Chair approved that amendment on
7 January 5th, 1993?

8 A. Yes, that's true. He did.

9 Q. Okay. Is it further your understanding that,
10 nevertheless, Kathryn Hamilton was given a consent form
11 on January 6th, 1993, that contained a reference to IV
12 pentoxifylline?

13 A. Yes.

14 Q. From that, would it be fair to say that if the
15 IRB process worked as intended by Dr. Bensinger and the
16 IRB cochair, she would have been provided with a consent
17 form that did not reference IV pentoxifylline?

18 A. If IRB processes are working as they should be,
19 that should have been the case. As I stated earlier, I
20 have concerns that throughout that was not the case.

21 But let me go back to your original
22 question. It was about the IV pentoxifylline. Something
23 should have happened back in November or December.

24 Q. Okay. And is what you say should have happened
25 outlined in paragraph 4 on page 3 of your report?

1 A. Could you show me where you're --

2 Q. Right here.

3 Paragraph 4 starts off: Immediately upon
4 receipt of notice that IV PTX was no longer being
5 supplied..."

6 Does that paragraph describe what, in your
7 opinion, should have happened?

8 A. That would have been one of the steps of -- that
9 would have been one of the steps. There are many
10 different directions he could have taken to expedite this
11 review.

12 Q. Let's assume they expedited it, but the staff
13 and the investigator and the IRB Committee Chair didn't
14 notice, as happened here, that the consent form -- the
15 revised consent form still contained a reference to IV
16 PTX.

17 How would expedited review change anything
18 for Kathryn Hamilton?

19 A. Would you mind repeating the question?

20 Q. Let's assume they expedited in the way you
21 indicated but same mistake occurred and they did not
22 catch the fact that the revised consent form still
23 referenced IV pentoxifylline.

24 How would things have been different for
25 Kathryn Hamilton?

SD

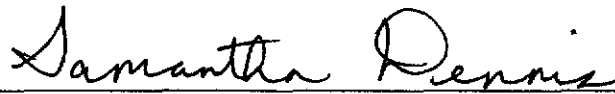
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1 STATE OF TEXAS *
2 COUNTY OF HARRIS *

3 I, the undersigned certified shorthand reporter
4 in and for the State of Texas, certify that the facts
5 stated in the foregoing pages are true and correct.

6 I further certify that I am neither attorney or
7 counsel for, nor related to or employed by, any of the
8 parties to the action in which this deposition is taken
9 and, further, that I am not a relative or employee of any
10 counsel employed by the parties hereto, or financially
11 interested in the action.

12 SUBSCRIBED AND SWORN TO under my hand and seal
13 of office on this the _____ day of
14 _____ 2002.

15 

16 SAMANTHA L. DENNIS, CSR
17 Certified Shorthand Reporter
18 in and for the State of Texas

19 Certificate No. 7512
20 Expiration date: 12-31-2002